

THE CASE

OF

Mr. BENJAMIN LEECH Brick-layer,

AT THE

OLD-BAILY,

THE

Fourteenth day of October, 1682.

THE Poll for Election of Mayor for the year ensuing being continued by Adjournments from Michaelmas-day to the second of October, one Benjamin Leech Brick-layer, being a Free-man and Livery-man of the City of London, came to Guild-Hall to Poll, wherein in Discourse he was Charged to have said to this Effect, That Sir William Prichard should never be Lord Mayor, unless he came in by Stealth, as North and Rich were Sheriffs; for which he was without any Constable or other legal Officer, carried before Sir John Moor Lord Mayor, before whom he owned the Words, or Words to that effect; whereupon he was by the Lord Mayor Committed immediately to the Compter, from whence he was Bailed next day, giving his Recognizance, with Sureties, to appear at the next Sessions at Guild-Hall; which Sessions of the Peace being Adjourned to the 13th of October to Old-Baily, there was a Bill of Indictment preferred and found against the said Mr. Leech, the Tenor of which followeth, (viz.)

London. ff. Juratores pro Domino Rege,
super Sacramentum suum praesentant, quod Benjaminus Leech nuper de London, Bricklayer, existens persona mala & perverse dispositionis, secundo die Octobris, Anno Regni domini nostri Caroli secundi, Dei gratia Angliæ, Scotiæ, Franciæ, & Hiberniæ Regis fidei Defensoris, &c. tricesimo quarto; machinans, & false & maliciose intendens Pacem dicti Domini Regis infra Civitatem London. inquietare & perturbare, ac diversas Differentias & Dissensiones inter Cives Civitatis predictæ, & alios Legeos & Subditos dicti Domini Regis infra hoc Reg-

London. ff. The Jurors for our Lord the King, upon their Oaths do present, that Benjamin Leech late of London Brick-layer, being a Person of an evil and perverse disposition, the second day of October, in the thirty fourth Year of the Reign of our Lord Charles the Second, by the Grace of God of England, Scotland, France, and Ireland King, Defender of the Faith, &c. devising, and falsly and maliciously intending the Peace of our said Lord the King within the City of London to disquiet and disturb, and divers differences and dissensions amongst the Citizens of the City aforesaid, and other the Liege People and Subjects of our said Lord the King within this King-

Kingdom of England, of and concerning the Election of a Maior and Sheriffs of the City aforesaid, and County of *Middlesex*, to stir up, move and procure; and one Sir *William Prichard* Knight, then, and yet one of the Aldermen of the City aforesaid, then in Election of Maior of the City aforesaid, being for one year then, and yet to come; and also one *Dudley North* Esquire, and one *Peter Rich* Esquire, which *Dudley North* and *Peter Rich* lately before that time, in a due and lawful manner, according to the ancient Priviledges and Customs of the City aforesaid, were Elected and Sworn, Sheriffs of the City of London and County of *Middlesex*; and the Election of the aforesaid Sheriffs by the Citizens of the City aforesaid made, into the greatest hatred contempt and scandal to bring, the aforesaid *Benjamin Leech* afterwards, that is to say, the said second day of *October*, in the year aforesaid, at London, viz. in the Parish of *St. Michael Bassishaw*, in the Ward of *Bassishaw* London aforesaid, in the Guild-Hall of the City aforesaid, there his aforesaid Contrivances and Intentions the better to perform, having Discourse with one *Thomas Smyth* in Guild-Hall aforesaid, then and there falsely, unlawfully, unjustly and maliciously did say, relate, and in the hearing of divers the Liege People and Subjects of our said Lord the King, Citizens of the City aforesaid, publish, That *Prichard* (the aforesaid Sir *William Prichard* Knight, meaning) should not be Lord Maior, (Lord Maior of the City aforesaid meaning) unless he would be Lord Maior unlawfully, and by stealth, as the Sheriffs (the aforesaid *Dudley North* and *Peter Rich*, Sheriffs of the City and County aforesaid, meaning) were Sheriffs of the City and County aforesaid: To the great disturbance of the Peace of our said Lord the King, to the great disparagement of the Governours and Government of the City aforesaid, and also the Scandal, Disparagement and Defamation of the aforesaid Sir *William Prichard*, and the aforesaid *Dudley North* and *Peter Rich*, in due manner Elected Sheriffs of the City and County aforesaid, to the evil example of all others in the like Case offending, and against the Peace of our said Lord the King that now is, his Crown and Dignity, &c.

num Angliæ, de & concernens Electione Maioris Civitatis predictæ, & Vicecomitum Civitatis predictæ & Comitatus *Middlesex*, suscitare, movere, & procurare; & quendam *Willielmum Prichard Militem*, adunc, & adhuc unum *Aldermannum Civitatis predictæ*, & adunc in Electione pro Maiore Civitatis predictæ, existens pro una Anno adunc & adhuc venturo; necnon quosdam *Dudley North Armigerum*, & *Petrum Rich Armigerum*, qui quidem *Dudley North* & *Petrus Rich* nuper pro antea debito legitimo modo secundum antiquas Privilegias & Consuetudines Civitatis predictæ, electi & iurati fuerunt Vicecomites Civitatis London & Comitatus *Middlesex*; & Electionem prefat. Vicecomitum per Cives Civitatis predictæ, factam in maximum odium, contemptum, & scandalum, inferre ipse predictus *Benjaminus Leech* postea, scilicet dicto secundo die *Octobris* Anno supradicti, apud London, videlicet in Parochia sancti Michaelis Bassishaw, in Warda de Bassishaw, London, predict. in Guild-Hall Civitatis predictæ, ibidem ad predict. Machinationes & intentiones suas melius perficiendi. habens Colloquium cum quodam *Thoma Smyth* in Guild-Hall predictæ, adunc & ibidem falso, illicite, injuste & maliciose dixit, retulit, & in auditu diversorum *Legorum* & *Subditorum* dicti Domini Regis, Civium Civitatis predictæ, publicavit, Quod *Prichard* (prefatum *Willielmum Prichard Militem*, innuendo) non foret Dominus Maior, (Dominus Maior Civitatis predictæ innuendo) nisi foret Dominus Maior illicite, & per furtum, Anglice by Stealth, prout Vicecomites prefatum *Dudley North* & *Petrum Rich*, Vicecomites Civitatis predictæ & Comitatus predictæ innuendo) fuerunt Vicecomites Civitatis & Comitatus predictæ: Ad magnam disturbance Pacis dicti Domini Regis, ad magnum opprobrium Gubernatorum & Gubernationis Civitatis predictæ; necnon ad Scandalum, Opprobrium, & Defamationem prefati *Willielmi Prichard Militis*, & prefati *Dudley North* & *Petri Rich* idcirco modo electi Vicecomitum Civitatis & Comitatus predictæ, in malum exemplum omnium aliorum consimili Casu delinquentium, ac contra Pacem dicti Domini Regis nunc, Coronam & Dignitatem suam, &c.

Whereunto the Defendant offer'd the
Plea following.

Leech } **E**T predictus Benjaminus Leech,
ad^s } in propria persona sua venit
Domini } & defendit vim & injuriam quan-
Regis. } do, &c. & omnem Contemptum
& quicquid, &c. & petit Judi-
cium de Indictamento predicto, quia dedit
quod Juratores pro Domino Rege predicto,
qui Indictamentum illud fecerunt & presenta-
verunt, adinde Retornati & Impannellati fu-
erunt per quosdam Dudley North Armige-
rum, & Petrum Rich Armigerum, tanquam Vi-
cecomites Civitatis London, quique dum Dud-
ley & Petrus tempore Pannelli & Retorna-
tus illius per eos sic facti, non fuerunt nec
eorum alter fuit Vicecomites dicta Civitatis
London, per quod idem Indictamentum sic
factum & presentatum per hujusmodi Jura-
tores sic ut prefertur, Impannellatos & Re-
tornatos per Personas tunc non existentes
Vicecomites Civitatis predicta, vigore Sta-
tuti in hujusmodi Casu editi & provisum va-
uum in Lege existit & nullius effectus, &
hoc paratus est verificare; unde petit Judici-
um de Indictamento illo, & quod Indicta-
mentum illud Cassetur, &c.

W. Thompson.

Whereunto the Defendant offer'd the Plea
following.

Leech at the } **A**ND the aforesaid Ben-
Suit of amr. } jamin Leech, in his
Lord the } proper Person doth come
King. } and defend the Force and
Injury, when, &c. and all
Contempt and whatsoever, &c. and Prays
Judgment of the Indictment aforesaid, be-
cause he saith the Jurors for our Lord the
King aforesaid, who that Indictment made
and presented, were thereunto Returned and
Impannelled by one Dudley North Esquire,
and one Peter Rich Esquire, as Sheriffs of
the City of London, which Dudley and
Peter, at that time of the Pannel, and the
Return thereof by them so made, were
not, nor either of them was Sheriffs of the
said City of London, by which the said In-
dictment so made and presented by such
Jurors so as aforesaid Impannelled, and Re-
turned by Persons then not being Sheriffs
of the City aforesaid, by force of the
Statute in the like Case made and provi-
ded, is void in Law and of none Effect,
and this he is ready to verify; whereupon
he Prays Judgment of that Indictment,
and that that Indictment might be qual-
ified, &c.

W. Thompson.

Which said Plea being ingrossed in Parchment, and Signed by William Thompson of the Middle-Temple, Councillor at Law, was on Saturday morning deliver'd into Court by the Defendant, who pressed that the Plea might be received, and he and his Bail dismissed from further Attendance for that time: Whereunto it was Answered, that the Court would consider thereof till the Afternoon; In the Afternoon the Defendant attended with Mr. Thompson his Counsel, and Mr. Osborn of the Inner-Temple Councillor at Law attended for the King; the Court being Sate, the Plea was read, and then Mr. Osborne moved that the Plea ought not to be received, for that it was a new Plea without a precedent, and that it could not be Tryed or determined there; that it was a frivolous Plea, and ought not to be received, and so left it to the Judgment of the Bench. Upon which Mr. Thompson allowed that such a Plea had rarely been made use of, because the like Case had rarely or never happened, but the reason thereof did justifie its Legality, and therefore pressed that the Plea might be accepted; that it never was hitherto denied to any man to Plead to an Indictment of this nature, what he thought fit in his own Defence, especially when he offers the same under Counsels hand; that this was a ready way to determine who were legally Sheriffs, if the Plea was not good in Law, the Attorney General or the Kings Council might demurr to it; that if the matter alleadged in the Plea was false, Issue might be taken thereon, which might soon be Tryed by a Jury; but if the matter should appear to be true, there was not so much as any colour in Law for those worthy Gentlemen Mr. North and Mr. Rich to take upon them to Return Juries; and therefore in the behalf of his Client, demanded again that the Plea might be received; the truth or validity thereof being not to be determined, till some Answer should be made thereunto by Replication or Demurring in Writing. In Answer thereunto Mr. Justice Levinz (being the only Judge then present) was pleased to express himself to this effect: That he desired to see the Statute mentioned in the Plea, whereupon it was read, (viz.) The

11. H.

11 H. 4. 9. Then Mr. Justice *Levinz* spake to this effect: That this Statute was made to prevent the nomination of Juries to the Sheriffs; and though it be thereby provided that Pannels should be Returned by the Sheriffs without denomination of any, yet he was of Opinion that it could not extend to the Case in hand, seeing the worthy Persons that attended there, were owned as Sheriffs by Lord Maior, Mr. Recorder, and several Aldermen there present, and that he made no difference between Sheriffs *de facto* and *de jure*, and that these persons being there so allowed, he must look upon them as Sheriffs *de jure*: That a Gaol-delivery had been held, wherein above forty Prisoners had been tryed; and that if this Plea should be allowed, all the proceedings against them would come in question: And then asked Mr. *Thompson*, What if all the Felons at an Assizes should insist upon the like Plea, must all further proceedings stop, till the Sheriff goes home and fetch his Letters Patents? Whereupon Mr. *Thompson* said, That he thought in that Case such stop could not be prevented, the Law being plain. Then Mr. Justice *Levinz* said farther to this effect, That he had considered of this matter; and that in his Judgment the Plea was a frivolous Plea, and ought not to be received; but yet he being the only Judge then present, he should advise my Lord Maior and the rest of the Bench to take Advice of all the Judges, before an absolute Determination whether the Plea ought to be refused or not. Upon this Sir *John Peak* said, We will not receive the Plea; with whom agreed Sir *James Edwards*, Sir *James Smith*, Sir *Thomas Beckford*, and Sir *Robert Jefferies*, and the Lord Maior also; Sir *George Treby* the Recorder said, That he was of Opinion with Mr. Justice *Levinz*. Upon this *Leech* was pressed to Plead Not Guilty: which he refused, saying several times, He would plead no other Plea than what he had offered. Then the Court gave him half an Hours time to advise with his Council, who withdrew and advised accordingly, and returned with the same Resolution not to alter his Plea, and tendered his Plea again to the Court, who again rejected it: And because he would plead no other Plea, (he being first asked, Whether he would Submit to the Court and ask Pardon; and refusing so to do; having as he apprehended done no wrong) was Fined Twenty Marks, and committed to *Newgate* till he should pay the same; which was done that Night, and *Leech* thereby discharged.

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